

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NICHOLAS DARLEY,

Plaintiff,

- against -

UNITED STATES OF AMERICA, et al.,

Defendants.

**ORDER**

22-CV-00714 (PMH)

PHILIP M. HALPERN, United States District Judge:

Nicholas Darley (“Plaintiff”), incarcerated in the Federal Correctional Institution in Otisville, New York and proceeding *pro se* and *in forma pauperis*, asserts claims for negligence and medical malpractice under the Federal Tort Claims Act, seeking damages and injunctive relief. (Doc. 1, “Compl.”). Plaintiff presses claims against Sarah Deez, David LeMaster, Alphonso Linley, Jorge Maldonado, Kathy McNutt, Avion Thomas-Walsh, Jayne Vander Hey-Wright, Bryan Walls (the “Individual Defendants”), and the United States of America (together with the Individual Defendants, “Defendants”). (*Id.*).

Pending before the Court is Defendants’ partial motion to dismiss, filed on April 3, 2023, seeking the dismissal of “all claims except for any claims against the United States of America under the Federal Tort Claims Act” as well as Plaintiff’s request for injunctive relief. (Doc. 67; Doc. 68, “Def. Br.”). Defendants construe Plaintiff’s Complaint as alleging *Bivens* claims, claims under the Eighth Amendment, and the Administrative Procedure Act. Plaintiff responded to Defendants’ partial motion to dismiss on May 15, 2023, “conced[ing] to Defendants’ arguments” and agreeing that “the only remaining Defendant should be the United States of America.” (Doc. 78, “Pl. Br.”; Doc. 79, “Pl. Decl.”). Plaintiff further conceded that “all claims for injunctive relief must be dismissed.” (Pl. Decl. ¶ 6).

**CONCLUSION**

Defendants' partial motion to dismiss is GRANTED. Accordingly, all Defendants except for the United States of America are dismissed, and all claims except for claims for negligence and medical malpractice brought under the Federal Tort Claim Act against the United States of America are dismissed. Plaintiff's claims for negligence and medical malpractice under the Federal Tort Claims Act shall proceed to discovery. Defendant United States of America is directed to file an Answer by July 31, 2023.

The Clerk of Court is respectfully directed to (i) terminate all Defendants except for the United States of America and (ii) terminate the motion sequence pending at Doc. 67.

**SO ORDERED.**

Dated: White Plains, New York  
July 17, 2023

  
\_\_\_\_\_  
PHILIP M. HALPERN  
United States District Judge